

ORDINANCE NO. 17045-07-2006

**AN ORDINANCE AMENDING ORDINANCE 15861 BY REMOVING CERTAIN PROPERTY FROM NEIGHBORHOOD EMPOWERMENT REINVESTMENT ZONE NUMBER FOURTEEN OF THE CITY OF FORT WORTH, TEXAS; DESIGNATING THE PROPERTY SO REMOVED AS "NEIGHBORHOOD EMPOWERMENT REINVESTMENT ZONE NUMBER THIRTY-ONE, CITY OF FORT WORTH, TEXAS"; PROVIDING THE EFFECTIVE AND EXPIRATION DATES FOR THE ZONE AND A MECHANISM FOR RENEWAL OF THE ZONE; AND CONTAINING OTHER MATTERS RELATED TO THE ZONE.**

**WHEREAS**, pursuant to the City Council's adoption on May 17, 2005 Resolution No. 3207-05-2005 (M&C G-14802), the City of Fort Worth, Texas (the "City") has elected to be eligible to participate in tax abatement and has established guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, as authorized by and in accordance with the Property Redevelopment and Tax Abatement Act, codified in Chapter 312 of the Texas Tax Code (the "Code"); and

**WHEREAS**, the City Council desires to promote the development of the area in the City more specifically described in Exhibit "A" of this Ordinance (the "Zone") through the creation of reinvestment zone for purposes of granting residential and commercial-industrial tax abatement, as authorized by and in accordance with Chapter 312 of the Code; and

**WHEREAS**, on January 27, 2004, the City Council adopted Resolution No. 3043 designating the West 7<sup>th</sup> Street/University Drive as a Neighborhood Empowerment Zone (the "NEZ") and adopted Ordinance No. 15861, designating the

NEZ as Neighborhood Empowerment Reinvestment Zone Number Fourteen, City of Fort Worth, Texas and

**WHEREAS**, JaGee Real Properties L.P. (“Developer”) have purchased certain real property located in the NEZ and that is more particularly described in Exhibit “A” of this Ordinance (the Land”) on which developer wishes to construct a one-story office building and a car wash (the “Improvements”); and

**WHEREAS**, the Code requires that the terms and conditions of tax abatement agreements covering property located in the same reinvestments zone must be identical; and

**WHEREAS**, Developer has requested a 5 year commercial tax abatement on the Improvements, which in accordance with the NEZ policy, is subject to unique terms and conditions specific to the project; and

**WHEREAS**, accordingly, the City Council hereby finds that is necessary and desirable to remove the Land from the Neighborhood Empowerment Reinvestment Zone No. 14 and to designate a new Neighborhood Empowerment Reinvestment Zone comprising only the Land (the “Zone”); and

**WHEREAS**, the City Council hereby finds that the project described herein will be an important element in the revitalization of the West 7<sup>th</sup> Street/University Drive Area by creating jobs opportunities to the community that are not available in the immediate area and that the development of the Land and the Zone in the manner described herein will best occur by means of tax abatement on the Improvements in return for Developer’s causing construction of the Improvements and compliance with

certain other commitments that will foster economic development in the Zone and the City in general; and

**WHEREAS**, on June 11, 2006 the City Council held a public hearing regarding the creation of the Zone, received information concerning the Improvements proposed for the Zone and afforded a reasonable opportunity for all interest persons to speak and present evidence for or against the creation of the Zone ("Public Hearing") as required by Section 312.201(d); and

**WHEREAS**, notice of the Public Hearing was published in a newspaper of general circulation in the City on June 30, 2006 which satisfies the requirement of Section 312.201(d)(1) of the Code that publication of the notice occur not later than the seventh day before the date of the public hearing; and

**WHEREAS**, in accordance with Sections 312.201(d)(2) and (e), notice of the Public Hearing was delivered in writing not later than the seventh day before the date of the public hearing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed Zone;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:**

**Section 1.**

**FINDINGS.**

That after reviewing all information before it regarding the establishment of the Zone and after conducting the Public Hearing and affording a reasonable opportunity for all interested persons to speak and present evidence for or against the creation of the Zone, the City Council hereby makes the following findings of fact:

- 1.1. The statements and facts set forth in the recitals of this Ordinance are true and correct. Therefore, the City has met the notice and procedural requirements established by the Code for creation of a reinvestment zone under Chapter 312 of the Code; and
- 1.2. Without a tax abatement on the Improvements, as requested by Developer, construction of the Improvements would not be financially feasible for Developer;
- 1.3. As a retail commercial development, the Improvements will cause among other things and without limitation, (i) new employment to occur with the Zone and (ii) existing business in the area to prosper as a result of increased residential activity; and
- 1.4. The Zone meets the criteria for the designation of a reinvestment zone as set forth in V.T.C.A., Tax Code, Section 312.202, as amended, in that the area is reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the municipality; and
- 1.5. The Improvements are feasible and practical and, once completed, will benefit the land included in the Zone as well as the City for a period in excess of ten (10) years, which is the statutory maximum term of any tax abatement agreement entered into under Chapter 312 of the Code.

**Section 2.**  
**REMOVAL OF LAND FROM NEIGHBORHOOD EMPOWERMENT**  
**REINVESTMENT ZONE NO. 14**

That Ordinance No. 15861 is hereby amended by removing the Land, as described in Exhibit "A", from Neighborhood Empowerment Reinvestment Zone Number Fourteen, City of Fort Worth, Texas.

**Section 3**  
**DESIGNATION OF ZONE.**

That the City Council hereby designates the Zone described in the boundary description attached hereto as Exhibit "A" "Neighborhood Empowerment Reinvestment Zone Number Thirty-one, City of Fort Worth, Texas". The project described herein is eligible for commercial development tax abatement pursuant to Section IIIC. Of the NEZ Policy.

**Section 4.**  
**TERM OF ZONE.**

That the Zone shall take effect upon the effective date of this Ordinance and expire five (5) years thereafter. The Zone may be renewed by the City Council for one or more subsequent terms of five (5) years or less.

**Section 5.**  
**SEVERABILITY.**

That if any portion, section or part of a section of this Ordinance is subsequently declared invalid, inoperative or void for any reason by a court of competent jurisdiction, the remaining portions, sections or parts of sections of this Ordinance shall be and

remain in full force and effect and shall not in any way be impaired or affected by such decision, opinion or judgment.

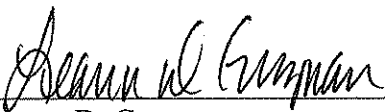
**Section 6.  
IMMEDIATE EFFECT**

That this Ordinance shall take effect upon its adoption.

**AND IT IS SO ORDAINED.**

ADOPTED AND EFFECTIVE: July 11, 2006

APPROVED AS TO FORM AND LEGALITY:

By:   
Leann D. Guzman  
Assistant City Attorney

Date: July 28, 2006

M&C: C-21558

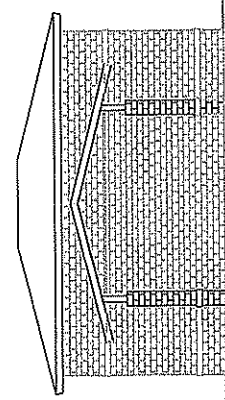
## **Exhibit A**

### Fort Worth Neighborhood Empowerment Reinvestment Zone Number Thirty-One

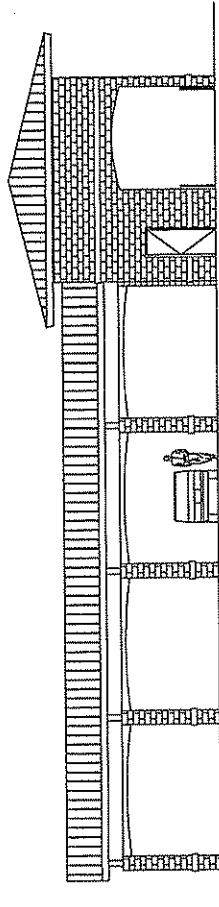
#### General Description

The area to be designated as Fort Worth Neighborhood Empowerment Reinvestment Zone Number Thirty-one for tax abatement purposes contains 1.1500 acres of land and is described below:

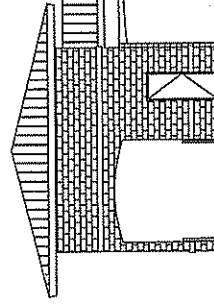
245 Bailey Avenue, Block 6R, Lot A, Westgate (Ft. Worth), in the City of Fort Worth, Tarrant County, Texas, and as shown on the Plat recorded in Cabinet 388-84, Slide No. 18, Plat Records of Tarrant County, Texas.



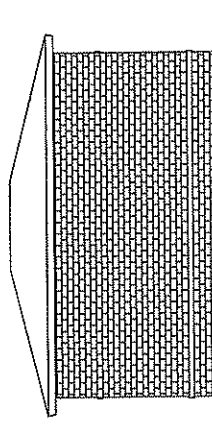
NORTH ELEVATION



WEST ELEVATION - BAILEY AVENUE



EAST ELEVATION

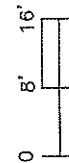


SOUTH ELEVATION

CAR WASH ELEVATIONS

01

1/16"=1'-0"



Property at  
245 Bailey Avenue  
Fort Worth, Texas

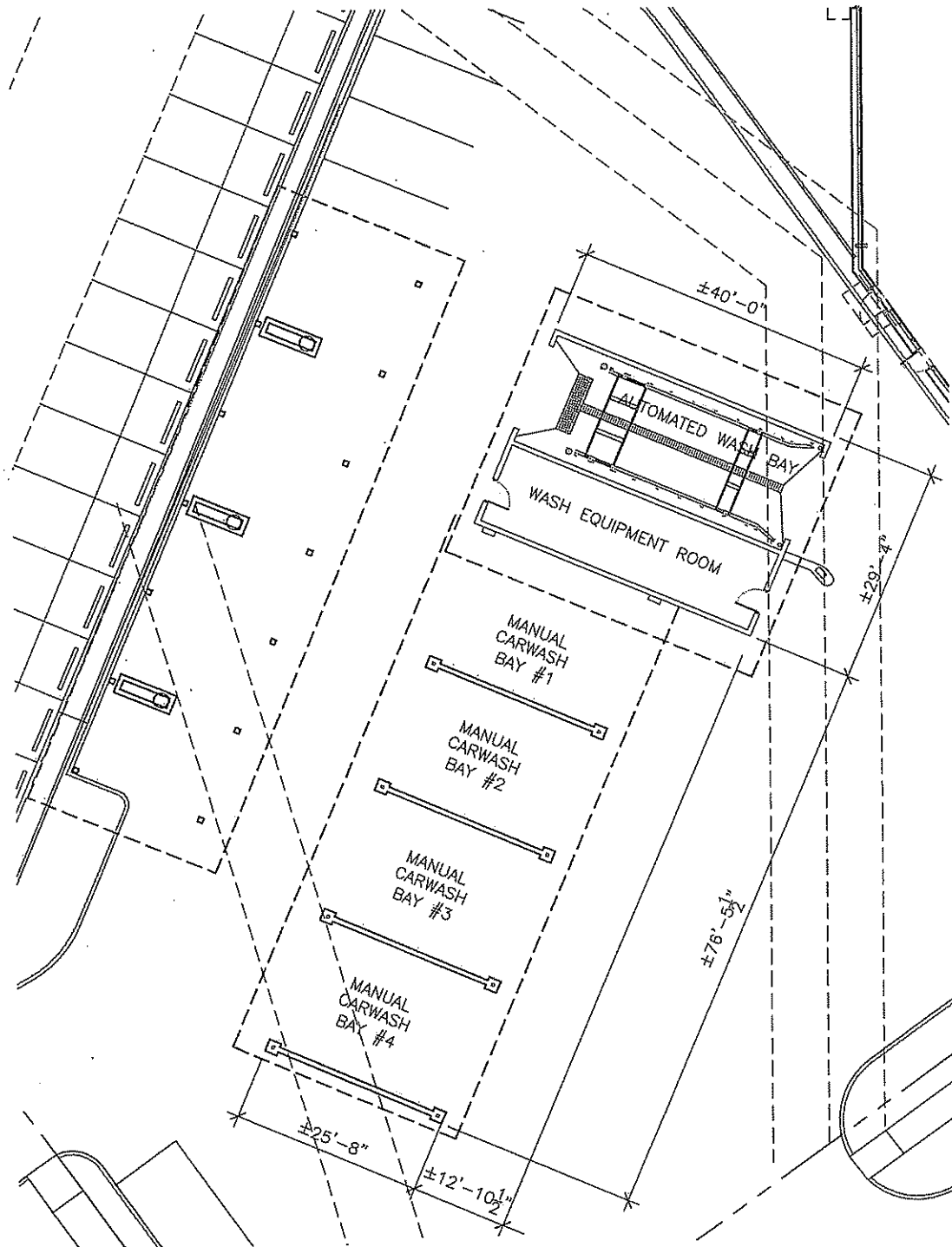


O'CONNOR ARCHITECTURE  
& INTERIOR DESIGN LLP

304 main street  
fort worth, texas 76102  
ph (817) 877 0801 fax (817) 877 4003  
email OAUD@bcglobal.net

DATE: 05.01.06	JOB No: 02024.01	DRAWN BY:	SHEET No: SK-4
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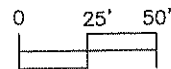




01

# CAR WASH PLAN

1/16"=1'-0"



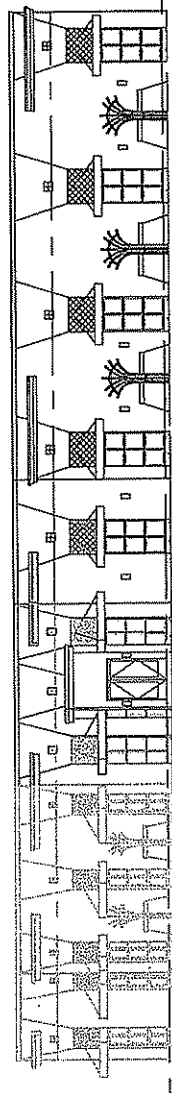
Property at  
245 Bailey Avenue  
Fort Worth, Texas



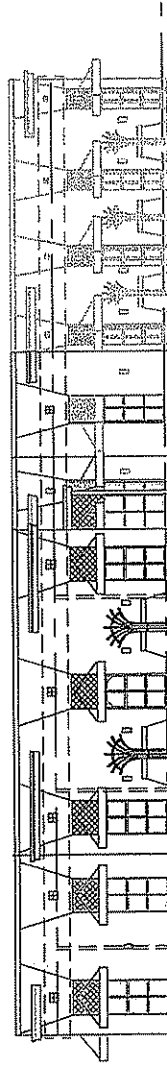
O'CONNOR ARCHITECTURE  
& INTERIOR DESIGN LLP

304 main street  
fort worth, Texas 76102  
ph (817) 877 0091 fax (817) 877 4093  
email OAUD@oabcglobal.net

DATE: 05.01.06	JOB No: 02024.01	DRAWN BY:	SHEET No: SK-3
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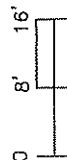
SOUTH ELEVATION



SOUTHWEST ELEVATION

JUNIOR LEAGUE ELEVATIONS

SOUTH & SOUTHWEST



1/16"=1'-0"

01



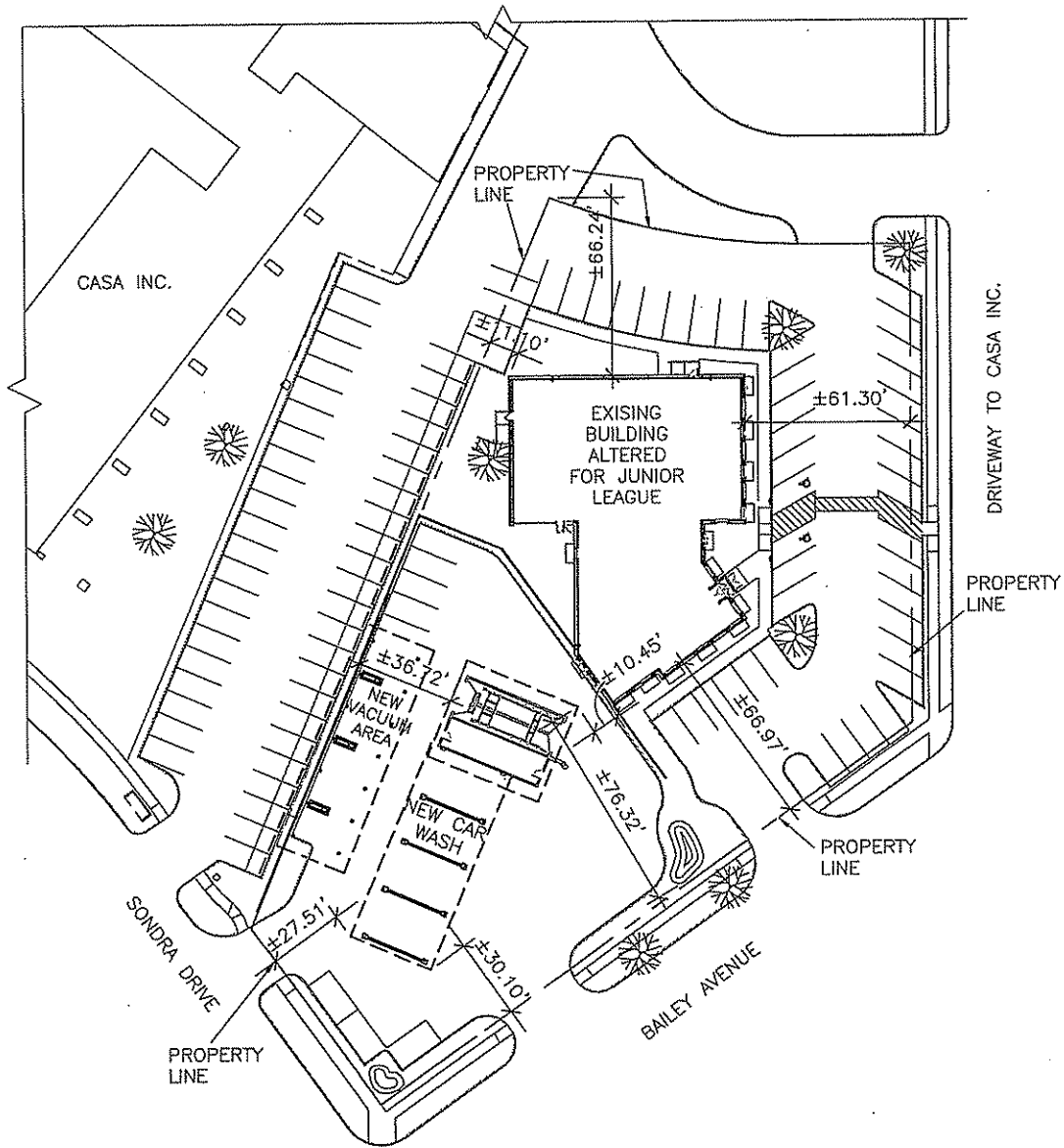
Property at  
245 Bailey Avenue  
Fort Worth, Texas



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& INTERIOR DESIGN LLP

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fort worth, texas 76102  
ph (817) 877 0691 fax (817) 877 4003  
email OAD@obcglobal.net

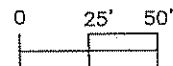
DATE: 05.01.06	JOB No: 02024.01	DRAWN BY:	SHEET No: SK-5
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01

# SITE PLAN

1:50



Property at  
245 Bailey Avenue  
Fort Worth, Texas



O'CONNOR ARCHITECTURE  
& INTERIOR DESIGN LLP

304 main street  
fort worth, texas 76102  
ph (817) 877 0501 fax (817) 877 4083  
email OAO@abcglobal.net

DATE:	JOB No:	DRAWN BY:	SHEET No:
05.01.06	02024.01		SK-1

**Exhibit A**

Property Legal Description

245 Bailey Avenue, Block 6R, Lot A, Westgate (Ft. Worth), in the City of Fort Worth, Tarrant County, Texas, and as shown on the Plat recorded in Cabinet 388-84, Slide No. 18, Plat Records of Tarrant County, Texas.

Project Description

One-story Office Building – existing building to be remodeled on the interior and exterior.

One-story Car Wash

The Office Building will be designed to accommodate the Junior League of Fort Worth.

The building will have the following elements:

- approx area totaling 7,500 sf
- new stucco finished exterior
- blending stucco colors
- wood shade trellis over windows
- steel vine trellis

The Car Wash will be designed to accommodate the surrounding neighborhoods.

The Car Wash will consist of the following elements:

- 4 manual bays, 1 automatic, and 4 vacuum stations
- Aesthetically pleasing masonry structures
- Metal roof
- Attractive landscaping consisting of berms, shrubs, and trees
- Wooden fence to separate car wash from adjoining property

STATE OF TEXAS §

Exhibit C

COUNTY OF TARRANT §

**TAX ABATEMENT AGREEMENT FOR PROPERTY LOCATED IN A  
NEIGHBORHOOD EMPOWERMENT ZONE**

**245 Bailey Avenue**

This **TAX ABATEMENT AGREEMENT** (“**Agreement**”) is entered into by and between the **CITY OF FORT WORTH, TEXAS** (the “**City**”), a home rule municipal corporation organized under the laws of the State of Texas and acting by and through Dale A. Fisseler, its duly authorized Assistant City Manager, and JaGee Real Properties L.P., (“**Owner**”) acting by and through Richard F. Garvey, an individual and Owner’s general partner of property located at 245 Bailey Avenue, Block 6R, Lot A, Westgate (Ft. Worth), in the City of Fort Worth, Tarrant County, Texas, and as shown on the Plat recorded in Cabinet 388-84, Slide No. 18, Plat Records of Tarrant County, Texas.

The City Council of the City of Fort Worth (“**City Council**”) hereby finds and the City and Owner hereby agree that the following statements are true and correct and constitute the basis upon which the City and Owner have entered into this Agreement:

**A.** Chapter 378 of the Texas Local Government Code allows a municipality to create a neighborhood empowerment zone if the municipality determines that the creation of the zone would promote:

- (1) the creation of affordable housing, including manufactured housing in the zone;
- (2) an increase in economic development in the zone;
- (3) an increase in the quality of social services, education, or public safety provided to residents of the zone; or
- (4) the rehabilitation of affordable housing in the zone.

**B.** Chapter 378 of the Texas Local Government Code provides that a municipality that creates a neighborhood empowerment zone may enter into agreements abating municipal property taxes on property in the zone.

**C.** On July 31, 2001, the City Council adopted basic incentives for property owners who own property located in a Neighborhood Empowerment Zone, stating that the City elects to be eligible to participate in tax abatement and including guidelines and criteria governing tax abatement agreements entered into between the City and various third parties, titled “Neighborhood Empowerment Zone “NEZ Basic Incentives” (“**NEZ Incentives**”), these were readopted on October 4, 2005 (M&C G-14947). The October 4, 2005 NEZ Incentives are attached hereto as Exhibit “A” hereby made a part of the Agreement for all purposes.

**D.** The NEZ Incentives contains appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by Chapter 312 of the Texas Tax Code, as amended (the “**Code**”).

E. On January 27, 2004, the Fort Worth City Council adopted Ordinance No. 15861 (the "**Ordinance**") establishing "Neighborhood Empowerment Reinvestment Zone No.14" City of Fort Worth, Texas (the "**Zone**") and adopted Resolution No. 3043 establishing "Designation of West 7<sup>th</sup> Street/University Drive Area as a Neighborhood Empowerment Zone" (the "**NEZ**"). On July 11, 2006, the City Council adopted Ordinance No. \_\_\_\_ (the "**Ordinance**") establishing "Neighborhood Empowerment Reinvestment Zone No. 31 City of Fort Worth, Texas (the "**Zone**").

F. Owner owns certain real property located entirely within the Zone and that is more particularly described in Exhibit "B", attached hereto and hereby made a part of this Agreement for all purposes (the "**Premises**").

G. Owner or its assigns plan to construct a one-story office building and a car wash, more particularly described in Section 1.1 of this Agreement, on the Premises (the "**Project**").

H. On May 2, 2006 Owner submitted an application for tax abatement to the City concerning the Premises (the "**Application**"), attached hereto as Exhibit "C" and hereby made a part of this Agreement for all purposes.

I. The contemplated use of the Premises, the Required Improvements, as defined in Section 1.1, and the terms of this Agreement are consistent with encouraging development of the Zone in accordance with the purposes for its creation and are in compliance with the NEZ Incentives, the Ordinance and other applicable laws, ordinances, rules and regulations.

J. The terms of this Agreement, and the Premises and Required Improvements, satisfy the eligibility criteria of the NEZ Incentives.

K. Written notice that the City intends to enter into this Agreement, along with a copy of this Agreement, has been furnished in the manner prescribed by the Code to the presiding officers of the governing bodies of each of the taxing units in which the Premises is located.

**NOW, THEREFORE**, the City and Owner, for and in consideration of the terms and conditions set forth herein, do hereby contract, covenant and agree as follows:

1. **OWNER'S COVENANTS.**

1.1. **Real Property Improvements.**

Owner shall construct, or cause to be constructed, on and within the Premises certain improvements consisting of a one-story office building and a car wash, (i) of at least 7500 square feet in size, and (ii) having a construction cost upon completion of \$756,000.00 including site development costs but such minimum construction costs shall be reduced by any construction cost saving (collectively, the "**Required Improvements**"). The type, preliminary site plan, conceptual elevation, number and location of the Required Improvements are described in Exhibit "D". The "**Required Improvements**" shall have an appraised value of \$756,000.000 as determined by an Independent appraiser. Owner shall

provide a copy of the final construction invoices, independent appraisal and final site plan to City once it is approved by the Department of Development and the parties agree that such final site plan shall be a part of this Agreement and shall be labeled Exhibit "E". The final site plan shall be in substantially the same form as the preliminary site plan. Minor variations, and more substantial variations if approved in writing by both of the parties to this Agreement, in the Required Improvements from the description provided in the Application for Tax Abatement shall not constitute an Event of Default, as defined in Section 4.1, provided that the conditions in the first sentence of this Section 1.1 are met and the Required Improvements are used for the purposes and in the manner described in Exhibit "D".

**1.2. Completion Date of Required Improvements.**

Owner covenants to substantially complete construction of all of the Required Improvements within two years from the issuance and receipt of the first building permit, unless delayed because of force majeure, in which case the one-year shall be extended by the number of days comprising the specific force majeure. For purposes of this Agreement, force majeure shall mean an event beyond Owner's reasonable control, including, without limitation, delays caused by adverse weather, delays in receipt of any required permits or approvals from any governmental authority, or acts of God, fires, strikes, national disasters, wars, riots and material or labor restrictions, and shortages as determined by the City of Fort Worth in its sole discretion, which shall not be unreasonably withheld, but shall not include construction delays caused due to purely financial matters, such as, without limitation, delays in the obtaining of adequate financing.

**1.3. Use of Premises.**

Owner covenants that the Required Improvements shall be constructed and the Premises shall be continuously used as a rental service store and in accordance with the description of the Project set forth in the Exhibit "D". In addition, Owner covenants that throughout the Term, the Required Improvements shall be operated and maintained for the purposes set forth in this Agreement and in a manner that is consistent with the general purposes of encouraging development or redevelopment of the Zone.

**2. ABATEMENT AMOUNTS, TERMS AND CONDITIONS.**

Subject to and in accordance with this Agreement, the City hereby grants to Owner real property tax abatement on the Premises, the Required Improvements, as specifically provided in this Section 2 ("**Abatement**"). Abatement of real property taxes only includes City of Fort Worth-imposed taxes and not taxes from other taxing entities.

**2.1. Amount of Abatement.**

The actual amount of the Abatement granted under this Agreement shall be based upon the increase in value of the Premises and the Required Improvements over



their values on January 1, 2006, and this amount is \$219,002.00, the year in which this Agreement was entered into:

One Hundred percent (100%) of the increase in value from the construction of the Required Improvements.

**If the square footage requirement and the appraised value of the Required Improvements are less than as provided in Section 1.1 of this Agreement, except that such minimum construction costs shall be reduced by construction cost savings, Owner shall not be eligible to receive any Abatement under this Agreement.**

**2.2. Increase in Value.**

The abatement shall apply only to taxes on the increase in value of the Premises due to construction of the Required Improvements and shall not apply to taxes on the land.

**2.3. Abatement Limitation.**

Notwithstanding anything that may be interpreted to the contrary in this Agreement, Owner's Abatement in any given year shall be based on the increase in value of the Premises over its value on January 1, 2006, including the Required Improvements, up to a maximum of \$1,134,000.00. In other words, by way of example only, if the increase in value of the Premises over its value on January 1, 2006, including the Required Improvements, in a given year is \$1,600,000.00, Owner's Abatement for that tax year shall be capped and calculated as if the appraised value of the Premises for that year had only been \$1,134,000.00.

**2.4. Protests Over Appraisals or Assessments.**

Owner shall have the right to protest and contest any or all appraisals or assessments of the Premises and/or improvements thereon.

**2.5. Term.**

The term of the Abatement (the "Term") shall begin on January 1 of the year following the calendar year in which a final certificate of occupancy is issued for the Required Improvements ("Beginning Date") and, unless sooner terminated as herein provided, shall end on December 31 immediately preceding the fifth (5<sup>th</sup>) anniversary of the Beginning Date.

**2.6. Abatement Application Fee.**

The City acknowledges receipt from Owner of the required Abatement application fee of one half of one percent (.5%) of Project's estimated cost, not to exceed \$1,000. The application fee shall not be credited or refunded to any party for any reason.

### 3. RECORDS, AUDITS AND EVALUATION OF PROJECT.

#### 3.1. Inspection of Premises.

Between the execution date of this Agreement and the last day of the Term and for five (5) years after termination (“**Compliance Auditing Term**”), at any time during normal office hours throughout the Term and the year following the Term and following reasonable notice to Owner, the City shall have and Owner shall provide access to the Premises in order for the City to inspect the Premises and evaluate the Required Improvements to ensure compliance with the terms and conditions of this Agreement. Owner shall cooperate fully with the City during any such inspection and/or evaluation.

#### 3.2. Audits.

The City shall have the right to audit at the City’s expense the financial and business records of Owner that relate to the Project and Abatement terms and conditions (collectively, the “**Records**”) at any time during the Compliance Auditing Term in order to determine compliance with this Agreement and to calculate the correct percentage of Abatement available to Owner. Owner shall make all applicable Records available to the City on the Premises or at another location in the City following reasonable advance notice by the City and shall otherwise cooperate fully with the City during any audit.

#### 3.3. Provision of Information.

On or before February 1 following the end of every year during the Compliance Auditing Term and if requested by the City, Owner shall provide information and documentation for the previous year that addresses Owner’s compliance with each of the terms and conditions of this Agreement for that calendar year. This information shall include, but not be limited to, the number and dollar amounts of all construction contracts and subcontracts awarded on the Project.

*Failure to provide all information within the control of Owner required by this Section 3.3 shall constitute an Event of Default, as defined in Section 4.1.*

#### 3.4. Determination of Compliance.

On or before August 1 of each year during the Compliance Auditing Term, the City shall make a decision and rule on the actual annual percentage of Abatement available to Owner for the following year of the Term and shall notify Owner of such decision and ruling. The actual percentage of the Abatement granted for a given year of the Term is therefore based upon Owner’s compliance with the terms and conditions of this Agreement during the previous year of the Compliance Auditing Term.

#### **4. EVENTS OF DEFAULT.**

##### **4.1. Defined.**

Unless otherwise specified herein, Owner shall be in default of this Agreement if (i) Owner fails to construct the Required Improvements as defined in Section 1.1.; (ii) ad valorem real property taxes with respect to the Premises or the Project, or its ad valorem taxes with respect to the tangible personal property located on the Premises, become delinquent and Owner does not timely and properly follow the legal procedures for protest and/or contest of any such ad valorem real property or tangible personal property taxes or (iii) **OWNER DOES NOT COMPLY WITH CHAPTER 7 AND APPENDIX B OF THE CODE OF ORDINANCE OF THE CITY OF FORT WORTH** (collectively, each an “Event of Default”).

##### **4.2. Notice to Cure.**

Subject to Section 5, if the City determines that an Event of Default has occurred, the City shall provide a written notice to Owner that describes the nature of the Event of Default. Owner shall have ninety (90) calendar days from the date of receipt of this written notice to fully cure or have cured the Event of Default. If Owner reasonably believes that Owner will require additional time to cure the Event of Default, Owner shall promptly notify the City in writing, in which case (i) after advising the City Council in an open meeting of Owner’s efforts and intent to cure, Owner shall have one hundred eighty (180) calendar days from the original date of receipt of the written notice, or (ii) if Owner reasonably believes that Owner will require more than one hundred eighty (180) days to cure the Event of Default, after advising the City Council in an open meeting of Owner’s efforts and intent to cure, such additional time, if any, as may be offered by the City Council in its sole discretion.

##### **4.3. Termination for Event of Default and Payment of Liquidated Damages.**

If an Event of Default, which is defined in Section 4.1, has not been cured within the time frame specifically allowed under Section 4.2, the City shall have the right to terminate this Agreement immediately. Owner acknowledges and agrees that an uncured Event of Default will (i) harm the City’s economic development and redevelopment efforts on the Premises and in the vicinity of the Premises; (ii) require unplanned and expensive additional administrative oversight and involvement by the City; and (iii) otherwise harm the City, and Owner agrees that the amounts of actual damages there from are speculative in nature and will be difficult or impossible to ascertain. Therefore, upon termination of this Agreement for any Event of Default, Owner shall not be eligible for the Abatement for the remaining Term and Owner shall pay the City, as liquidated damages, all taxes that were abated in accordance with this Agreement for each year when an Event of Default existed and which otherwise would have been paid to the City in the absence of this Agreement. The City and Owner agree that this amount is a reasonable approximation of actual damages that the City will incur as a result of an uncured Event of Default and that this Section 4.3 is intended to provide the City with compensation for actual damages and

is not a penalty. This amount may be recovered by the City through adjustments made to Owner's ad valorem property tax appraisal by the appraisal district that has jurisdiction over the Premises. Otherwise, this amount shall be due, owing and paid to the City within sixty (60) days following the effective date of termination of this Agreement. In the event that all or any portion of this amount is not paid to the City within sixty (60) days following the effective date of termination of this Agreement, Owner shall also be liable for all penalties and interest on any outstanding amount at the statutory rate for delinquent taxes, as determined by the Code at the time of the payment of such penalties and interest.

#### **4.4. Termination at Will.**

If the City and Owner mutually determine that the development or use of the Premises or the anticipated Required Improvements are no longer appropriate or feasible, or that a higher or better use is preferable, the City and Owner may terminate this Agreement in a written format that is signed by both parties. In this event, (i) if the Term has commenced, the Term shall expire as of the effective date of the termination of this Agreement; (ii) there shall be no recapture of any taxes previously abated; and (iii) neither party shall have any further rights or obligations hereunder.

#### **4.5. Sexually oriented Business & Liquor Stores or Package Stores.**

a. Owner understands and agrees the City has the right to terminate this agreement if the Project contains or will contain a sexually oriented business.

b. Owner understands and agrees that the City has the right to terminate this agreement as determined in City's sole discretion if the Project contains or will contain a liquor store or package store.

### **5. EFFECT OF SALE OF PREMISES.**

Any attempted assignment without the City Council's prior written consent shall constitute grounds for termination of this Agreement and the Abatement granted hereunder following ten (10) calendar days of receipt of written notice from the City to Owner.

### **6. NOTICES.**

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

**City:**  
City of Fort Worth  
Attn: City Manager  
1000 Throckmorton  
Fort Worth, TX 76102

**Owner:**  
JaGee Real Properties L.P.  
Attn: Richard F. Garvey  
2918 Wingate  
Fort Worth, TX 76107

**and**

Housing Department  
Attn: Jerome Walker  
1000 Throckmorton  
Fort Worth, TX 76102

**7. MISCELLANEOUS.**

**7.1. Bonds.**

The Required Improvements will not be financed by tax increment bonds. This Agreement is subject to rights of holders of outstanding bonds of the City.

**7.2. Conflicts of Interest.**

Neither the Premises nor any of the Required Improvements covered by this Agreement are owned or leased by any member of the City Council, any member of the City Planning or Zoning Commission or any member of the governing body of any taxing units in the Zone.

**7.3. Conflicts Between Documents.**

In the event of any conflict between the City's zoning ordinances, or other City ordinances or regulations, and this Agreement, such ordinances or regulations shall control. In the event of any conflict between the body of this Agreement and Exhibit "D", the body of this Agreement shall control. As of July 11, 2006, the City is unaware of any conflicts between this Agreement and the City's zoning ordinance or other ordinances or regulations.

**7.4. Future Application.**

A portion or all of the Premises and/or Required Improvements may be eligible for complete or partial exemption from ad valorem taxes as a result of existing law or future legislation. This Agreement shall not be construed as evidence that such exemptions do not apply to the Premises and/or Required Improvements.

**7.5. City Council Authorization.**

This Agreement was authorized by the City Council through approval Mayor and Council Communication No. C-\_\_\_\_\_ on July 11, 2006, which, among other things, authorized the City Manager to execute this Agreement on behalf of the City.

**7.6. Estoppel Certificate.**

Any party hereto may request an estoppel certificate from another party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to the Owner, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if an Event of Default exists, the nature of the Event of Default and curative action taken and/or necessary to effect a cure), the remaining term of this Agreement, the levels and remaining term of the Abatement in effect, and such other matters reasonably requested by the party or parties to receive the certificates.

**7.7. Owner Standing.**

Owner shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying laws, ordinances, resolutions, or City Council actions authorizing this Agreement, and Owner shall be entitled to intervene in any such litigation.

**7.8. Venue and Jurisdiction.**

This Agreement shall be construed in accordance with the laws of the State of Texas and applicable ordinances, rules, regulations, or policies of the City. Venue for any action under this Agreement shall lie in the State District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**7.9. Recordation.**

A certified copy of this Agreement in recordable form shall be recorded in the Deed Records of Tarrant County, Texas.

**7.10. Severability.**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**7.11. Headings Not Controlling.**

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**7.12. Entirety of Agreement.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Owner, their assigns and successors in interest, as to the matters

contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. This Agreement shall not be amended unless executed in writing by both parties and approved by the City Council. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the City of Fort Worth,  
Texas.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by JaGee Real Properties  
L.P..

**CITY OF FORT WORTH:**

By: \_\_\_\_\_  
Dale A. Fisseler  
Assistant City Manager

By: \_\_\_\_\_  
Richard F. Garvey  
President

**ATTEST:**

By: \_\_\_\_\_  
City Secretary

**APPROVED AS TO FORM AND LEGALITY:**

By: \_\_\_\_\_  
Leann Guzman  
Assistant City Attorney

M & C: \_\_\_\_\_



STATE OF TEXAS           §  
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Dale A. Fisseler, Assistant City Manager of the CITY OF FORT WORTH, a municipal corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said CITY OF FORT WORTH, TEXAS, a municipal corporation, that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Fort Worth and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

\_\_\_\_\_  
Notary's Printed Name

STATE OF TEXAS       §  
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared Richard F. Garvey, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of JaGee Real Properties L.P.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
Notary's Printed Name

Exhibit A: NEZ Incentives

Exhibit B: Property Description

Exhibit C: Application: (NEZ) Incentives and Tax Abatement

Exhibit D: Project description including kind, number, and location of the proposed improvements.

Exhibit E. Final Construction Invoices, Independent Appraisal and Final Site Plan

*City of Fort Worth, Texas*  
**Mayor and Council Communication**

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**COUNCIL ACTION: Approved on 7/11/2006 - Ordinance No. 17045-07-2006**

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**DATE:** Tuesday, July 11, 2006

**LOG NAME:** 05JAGEE

**REFERENCE NO.: C-21558**

**SUBJECT:**

Adopt Ordinance to Designate Fort Worth Neighborhood Empowerment Reinvestment Zone Number 31 and Authorize Entering into a Tax Abatement Agreement with JaGee Real Properties, L.P., for Property Located at 245 Bailey Avenue in the West 7th Street/University Neighborhood Empowerment Zone

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**RECOMMENDATION:**

It is recommended that the City Council:

1. Hold a public hearing concerning the designation of 1.1500 acres of land as described in Exhibit "A" as Fort Worth Neighborhood Empowerment Reinvestment Zone (FWNERZ) Number 31;
2. Adopt the attached ordinance to designate the area as FWNERZ Number 31 pursuant to the Texas Property Redevelopment and Tax Abatement Act, Tax Code, Chapter 312;
3. Find that the statements set forth in the recitals of the attached Tax Abatement Agreement (the Agreement) with JaGee Real Properties, L.P., are true and correct;
4. Approve a five-year Municipal Property Tax Abatement for a property located at 245 Bailey Avenue in the West 7th Street/University Neighborhood Empowerment Zone (NEZ) owned by JaGee Real Properties, L.P.; and
5. Authorize the City Manager to enter into the Tax Abatement Agreement with JaGee Real Properties, L.P., for the property located at 245 Bailey Avenue in the West 7th Street/University NEZ in accordance with the NEZ Tax Abatement Policy and NEZ Basic Incentives, as amended.

**DISCUSSION:**

Chapter 378 of the Texas Local Government Code provides that a municipality can offer an abatement of municipal property taxes for properties located in a Neighborhood Empowerment Zone.

JaGee Real Properties, L.P. is the owner of the property located at 245 Bailey Avenue. The property is located in the West 7th/University NEZ. JaGee Real Properties, L.P. applied for a five-year municipal property tax abatement under the NEZ Tax Abatement Policy and Basic Incentive (M&C G-14947, as amended). The Housing Department reviewed the application and certified that the property met the eligibility criteria to receive NEZ municipal property tax abatement. The NEZ Basic Incentive includes a five-year municipal property tax abatement on the increased value of improvements to the qualified owner of any new construction or rehabilitation within the NEZ. JaGee Real Properties, L.P. will invest, at a minimum, \$756,000.00 to remodel an existing building on one side of the property for professional office space and to build a car wash on the other side of the property. The project is further described in Exhibit "B".

City staff recommends that City Council designate the 1.1500 acres of land (245 Bailey Avenue) and more particularly described in the attached ordinance as FWNERZ Number 31, so that the City can enter into a tax abatement agreement under the guidelines set forth in the Tax Code and the NEZ Tax Abatement Policy and Basic Incentive. The form of the tax abatement agreement is attached as Exhibit "C"

#### **TAX ABATEMENT TERMS**

Upon execution of the agreement, the total assessed value of the improvement used for calculating municipal property tax will be frozen for a period of five years, starting on January 1, 2007, at the estimated pre-improvement value as defined by the Tarrant Appraisal District (TAD) on January 1, 2006, for the property as follows:

Pre-improvement TAD Value of Improvements	\$219,002.00
Pre-improvement Estimated Value of Land	<u>\$331,128.00</u>
Total Pre-improvement Estimated Value	\$550,130.00

The municipal property tax on the improved value of the property is estimated at \$1,961.00 per year for a total of \$9,809.00 over a five-year period. However, this estimate may differ from the actual tax abatement value, which will be calculated based on the TAD appraisal value of the property.

In the event of a sale of the property, the agreement may be assigned, with City Council approval, to the new owner(s), so long as the new owner(s) meets all of the eligibility criteria as stated in the NEZ Tax Abatement Policy and Basic Incentives.

As required by Chapter 312 of the Texas Tax Code, a public hearing must be conducted regarding the creation of the Zone. Notice of this hearing was (1) delivered to the governing body of each affected taxing unit and (2) published in a newspaper of general circulation at least seven days prior to this hearing.

The proposed area meets the criteria for the designation of a reinvestment zone contained in Chapter 312 of the Tax Code. As a result of the designation, the area will contribute to the retention or expansion of primary employment and attract major investment in the zone that would be a benefit to the property and contribute to the economic development of the municipality. Further, future improvements in the zone will benefit the City, after any Tax Abatement Agreements that may be entered into have expired.

The proposed FWNERZ Number 31 expires after five years and may be renewed for periods not to exceed five years.

This property is located in COUNCIL DISTRICT 7.

#### **FISCAL INFORMATION/CERTIFICATION:**

The Finance Director certifies that this action will have no material effect on city funds.

#### **TO Fund/Account/Centers**

#### **FROM Fund/Account/Centers**

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**Submitted for City Manager's Office by:**

Dale Fisseler (6266)

**Originating Department Head:**

Jerome Walker (7537)

**Additional Information Contact:**

Sarah Odle (7316)

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